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**IN THE
COURT OF APPEALS OF INDIANA**

GABRIEL DANIELS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 29A04-0609-CR-479
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pfleging, Judge
Cause No. 29D02-0312-FC-169

May 10, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Gabriel Daniels appeals the denial of his motion to withdraw his guilty plea. Daniels has not demonstrated withdrawal of his plea was necessary to correct a manifest injustice or that the court abused its discretion in denying his motion. Therefore, we affirm.

FACTS AND PROCEDURAL HISTORY

During the early morning hours of December 30, 2003, Jennifer Inman was driving home to Noblesville from Kokomo. A car containing three persons she did not know followed her home. When Inman pulled into her driveway and got out of the car, Daniels exited the other car and approached her. He told her to “move,” (Tr. of Guilty Plea Hearing at 7),¹ and she moved aside. Daniels took her purse from her car and returned to the other car. Police later located the car in which Daniels was riding and found Inman’s purse in the trunk. Daniels admitted taking the purse from Inman’s car. The State charged him with robbery as a Class C felony² and theft as a Class D felony.³

On February 1, 2005, Daniels entered an agreement with the State whereby he would plead guilty to robbery and the State would dismiss the theft count. The plea agreement signed by Daniels, which he also initialed at the places indicated, provided:

4. The defendant acknowledges he/she has received a copy of the information, has read and discussed it with his/her attorney and understands all allegations made against him/her (GD) and the nature of the charge(s) against him/her. (GD)

¹ We have two volumes of transcripts before us. One is labeled the “Transcript of the Guilty Plea Hearing” and contains only the transcript of the Guilty Plea Hearing. The second, labeled “Transcript of Evidence,” contains the transcript of the hearing on Daniels’ failure to appear for sentencing, the transcript of the hearing on Daniels’ motion to withdraw his guilty plea, and the sentencing hearing. We cite the two transcripts by the titles given by the court reporter.

² Ind. Code § 35-42-5-1(2).

³ Ind. Code § 35-43-4-2(a).

5. The defendant acknowledges that he/she has given his/her attorney all of the facts known to him/her concerning the matter mentioned in the information, including all witnesses in his/her behalf, and believes that his/her attorney is fully informed as to all such matter [sic];

Further, that his/her attorney has since advised him/her as to any possible defenses he/she might have in this case. (GD)

* * * * *

7, The defendant understands that the State and Federal Constitutions guarantee him/her certain rights, among them being the rights to a public trial by jury (GD), to a speedy trial (GD), to be free from self-incrimination (GD), to confront and cross-examine the witnesses against him/her (GD), to have compulsory process for obtaining witnesses in his/her behalf (GD), to require the State to prove his/her guilt beyond a reasonable doubt (GD), and if convicted, to take an appeal to the Court of Appeals or Supreme Court of Indiana (GD), to have appointed counsel for conducting the trial of the case (GD), and to have appointed counsel for purposes of said appeal if indigent (GD). He/she further understands that the entry of his/her guilty plea pursuant to this agreement constitutes a waiver of those rights (GD). He/she further admits the truth of the facts alleged in the information to which he/she pleads guilty (GD) and understands that the guilty plea amounts to a conviction (GD).

* * * * *

9. The defendant knows the Court will not accept a plea of guilty from anyone who claims to be innocent, and he/she makes no claim of innocence. He/she now states that he/she did commit the crime to which he/she is pleading guilty. (GD). The defendant further acknowledges that his/her attorney has advised him/her that by his/her plea of guilty, he/she is admitting to the truth of all the facts alleged in the indictment and/or information or to an offense included thereunder and that upon entering of such a plea the Court shall proceed with judgment and sentence (GD).

* * * * *

11. The defendant acknowledges that his/her guilty plea is entered knowingly, intelligently and voluntarily and without coercion, duress, influence or other promise of leniency (GD).

12. The defendant acknowledges that he/she is entitled to have all of his/her rights explained to him/her and that he/she may have any questions answered for him/her by the Court.

13. The defendant acknowledges that he/she is satisfied with his/her counsel's representation and competency exhibited in this matter (GD) and that he/she believes this agreement is in his/her best interest (GD).

* * * * *

15. This agreement embodies the entire agreement between the parties, and no promises or threats have been made or inducements given the defendant by the State which are not set out herein. The defendant asks the Court to accept and enter a plea of guilty in reliance upon his/her statements made in this motion and hearing concerning such plea negotiations. (GD)

(Appellant's App. at 125-128.)

After the guilty plea hearing the court entered an order finding "Defendant's plea is knowingly and voluntarily made, and has a basis in fact." (*Id.* at 32.) The court set sentencing for March 3, 2005. Daniels did not appear for sentencing. A warrant was issued for his arrest. Daniels was apprehended in January of 2006.

On April 12, 2006, Daniels filed a motion to withdraw his plea of guilty. After a hearing, the court denied his motion. The court sentenced Daniels to five years imprisonment, with two of those years to be spent in the Hamilton County Work Release Program.

DISCUSSION AND DECISION

Ind. Code § 35-35-1-4(b) provides:

After entry of a plea of guilty . . . , but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty . . . for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The motion to withdraw the plea of guilty . . . made under this subsection shall be in writing and verified. The motion shall state facts in support of the relief demanded, and the state may file counter-affidavits in opposition to the motion. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea of guilty . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

In his motion, Daniels asserted:

He has had time to reflect on the plea of guilty and desires to withdraw the plea and to go to trial on the above charge of Robbery for the following reasons:

- a. Defendant believes he is not guilty of the offense charged.
- b. Defendant believes he was coerced into pleading guilty.
- c. Defendant did not fully understand the rights he gave up by pleading to the offense.

(Appellant's App. at 105.)⁴

1. Rights Waived

Daniels alleged he “did not fully understand the rights he gave up” by pleading guilty. (*Id.*) At the hearing on his motion, Daniels explained: “I knew that I was signing into a Plea but I didn’t know that I was signing away my rights to where I couldn’t, ah, back out or withdraw . . . from the Plea.” (Tr. of Evidence at 11.) When the State asked him to explain what he thought he was doing when he signed the agreement, Daniels said: “Um, I thought I was just like a deal, I was, ah, signing – I knew it was a Plea, ah, I was pleading guilty to the, ah, crime.” (*Id.* at 13.) He testified he remembered his counsel going over the Agreement with him and explaining his rights to him. Therefore, Daniels’ own testimony does not support his allegation he did not understand the rights he was waiving by pleading guilty.

Paragraph 7 of the Plea Agreement contained a list of the rights Daniels was waiving by pleading guilty. Daniels signed the Agreement and placed his initials after each of the rights listed in Paragraph 7. By signing the Agreement, Daniels also acknowledged he was “entitled to have all of his/her rights explained to him.”

⁴ We note his motion states no other “facts in support of the relief demanded.” Ind. Code § 35-35-1-4(b).

(Appellant's App. at 128.)

At the guilty plea hearing, Daniels denied having a mental illness or disability and denied being under the influence of drugs. The court explicitly listed the rights Daniels was waiving by pleading guilty, and Daniels testified he understood each of those rights and that he was waiving them. Daniels admitted he read, understood, and initialed the paragraphs of the plea agreement and he had an opportunity to discuss the plea agreement with his counsel.

Based on these facts, we cannot find manifest injustice or abuse of discretion in the denial of Daniels' motion to withdraw his plea.

2. Coercion

Daniels asserts he was coerced into pleading guilty. Coercion is "compulsion by physical force or threat of physical force." Black's Law Dictionary at 252 (7th Ed. 1999). At the hearing on the motion to withdraw his plea, Daniels testified:

Q And, you also believed in the, ah, Plea, you put in there that you believe that you were coerced in pleading guilty. Ah, you didn't mean that I had physically coerced you or anything of that nature, did you?

A No, no.

Q What do you mean by that, that you were coerced?

A Um, I asked, ah, advice from other people, um, and they said, you know, that's probably the best deal that I would have, or in my best interest to take this or that it wouldn't come any lower, and, ah, for some reason I thought that, they were, after I gave it some thought, I don't think it's in my best interest, you know to take the plea and that's why I want to withdraw my plea.

(Tr. of Evidence at 10-11.) That unidentified "other people" told Daniels it was probably in his best interest to plead guilty does not amount to coercion.

Daniels acknowledged in Paragraph 11 of the Plea Agreement that he was pleading guilty “without coercion, duress, influence or other promise of leniency.” (Appellant’s App. at 128.) At the guilty plea hearing, the Court asked Daniels if his plea was his “own free and voluntary act,” (Tr. of Guilty Plea Hearing at 13), and Daniels responded, “Yes, Sir.” (*Id.* at 14.) When asked if he had “been threatened or placed in fear to get [him] to plead guilty,” (*id.*), Daniels responded “No, Sir.” (*Id.*)

Daniels has not demonstrated he was coerced into pleading guilty. Therefore, the court’s refusal to permit withdrawal of his plea has not resulted in a manifest injustice or an abuse of discretion.

3. Innocence

Finally, Daniels claims the court should have allowed him to withdraw his guilty plea because he was not guilty. At the hearing on the motion to withdraw the plea, Daniels’ counsel asked him, “Okay . . . you did not believe that you were guilty of the offense charged, is that correct?” (Tr. of Evidence at 10.) Daniels responded, “Correct.” (*Id.*) His counsel asked no follow-up questions to explain why Daniels would plead guilty to a crime he did not believe he committed. The Court asked Daniels, “when you told the Court you reached inside the car and took out this . . . purse is that true?,” (*id.* at 15), Daniels’ answer was, “Ah, no it’s not true.” (*Id.*) However, when the Court asked whether Daniels had been in the car that followed Inman from Kokomo, he admitted he was in the car.

At the guilty plea hearing, the Court and Daniels had the following dialogue:

Q The charge that you are pleading guilty (sic) is Robbery and as it's set out in Count 1 of the charging information it states that: on or about December 30 of 2003, Gabriel I. Daniels did knowingly take property, to-wit: a purse from the presence of Jennifer I. Inman by using force on Jennifer I. Inman. Do you understand those allegation? [sic]

A Uh, they are not true. I didn't use any force.

Q Was she in her driveway?

A Yes, Sir.

Q And as she was in her driveway, did she get out of the vehicle?

A Yes, Sir.

Q And as she got out of the vehicle, did you move her away from that vehicle –

A No.

Q --so you could grab the purse out of the vehicle?

A No, Sir. I told her to move. I didn't threaten her. She moved. There was no kind of intimidating or anything. There wasn't any force or anything.

Q And how did you tell her to move?

A "Move."

Q What time of day was it?

A It was nighttime.

Q And where was this?

A I'm not quite sure of the location. It was in Noblesville.

Q This would not normally be a time that somebody would be coming up to her in her driveway?

A I wouldn't think so.

Q And so kind of looking from her point of view, if you yelled move or told her to move or demanded her to move-

A I'm sure she was a little-

Q -would she consider-

A Yeah.

Q -that might be a forceable action? Force means more than just pushing. You can force-

A It may lead to force?

Q Yeah.

A Yes.

* * * *

[Q] . . . I think that if you came up to me at 3:00 about in the morning and I was getting out of my car and you yelled, I'd felt like I had been forced to do something.

A: Yes.

(Tr. of Guilty Plea Hearing at 6-9.) Later, the State provided a factual basis for the plea:

It would be the State's evidence if this case proceeded to trial that on or about December 30, 2003, Jennifer Inman in the early morning hours of that day was approached, was followed from Kokomo in her car as she was traveling to the Noblesville area by a silver Pontiac Gran [sic] Prix or Bonneville and that at some point she arrived in the subdivision where she lived . . . ; that she was approached by the passenger of the car, that being the defendant, Gabriel Daniels . . . ; that while he approached her at her residence, he asked her some questions and the last question that would have been asked was, "What do you have in the car?"

She moved aside. He took her purse out of her car, got back into the car he was riding in and then left the area. He was later found in a car with two other males. The purse was found in the trunk and the defendant Gabriel Daniels did advise Detective Widner in an interview that he admitted being the one who took the purse from inside the vehicle of Jennifer Inman.

(*Id.* at 14-15.) Defense counsel then asked: "Gabriel, you indicated earlier that you, when you approached the car that evening, you told Ms. Inman to move; is that correct?"

(*Id.* at 15.) Daniels answered affirmatively.

Paragraph 9 of the Plea Agreement provided Daniels "makes no claim of innocence," "states that he/she did commit the crime," and admits "the truth of all the facts alleged in the indictment and/or information." (Appellant's App. at 127.)

The Court's refusal to permit Daniels to withdraw his plea creates no manifest injustice. Daniels told a police detective he took the purse from Inman's car. He approached Inman in her driveway around three in the morning and told her to "move" so

he could take the purse. We have little doubt a jury would have convicted him of robbery.

Neither will we find an abuse of discretion in the court's denial of Daniels' motion based on Daniels' sudden belief he is innocent. Daniels pled guilty a little over a year after the crime was committed. He failed to appear for sentencing and disappeared for another year. The Plea Agreement he signed indicated he had discussed all the facts of his case with his attorney and had been apprised of any defenses he may have had. His motion to withdraw his plea at this late date appears to be nothing more than an attempt to further delay imprisonment.

Affirmed.

NAJAM, J., and MATHIAS, J., concur.